

IT 01-7

Tax Type: Income Tax

Issue: Unreported/Underreported Receipts (Non-Fraudulent)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

**ABC, Inc.,
Taxpayer**

**No. 01-IT-0000
EIN: 00-0000000
Tax yr. end: 12/31/97**

**Charles E. McClellan
Administrative Law Judge**

RECOMMENDATION FOR DECISION

Appearances: Sean Cullinan, SAAG, for the Department. JOHN DOE, a non-attorney and officer and shareholder of ABC, Inc., *pro se*.

Synopsis:

This matter arose from a timely protest filed to a Notice of Deficiency issued to ABC, Inc. (taxpayer) on October 4, 2000 for the tax year 1997.¹ An evidentiary hearing was held on June 26, 2001.

The assessment for additional income tax in this case is based on an increase in taxpayer's gross receipts for 1997 as a result of the Department's audit of the taxpayer's sales tax returns². Having made a Subchapter S election under the federal Internal

¹ Taxpayer files its tax returns on a calendar year basis.

² These are the tax returns required to be filed by the Retailers' Occupation Tax Act. (ROTA),

Revenue Code (Title 26 U.S. Code), the assessment is limited to the Personal Property Replacement Tax.

My recommendation is that the Notice of Deficiency be made final.

Findings of Fact:

1. Taxpayer, a corporation, made an election to be taxed as a partnership under Subchapter S of the Internal Revenue Code. 26 U.S.C. § 1361 *et seq.* Tr. p. 1.
2. As the result of an examination of the taxpayer's sales tax returns by the Department, the results of which were agreed to by the taxpayer, taxpayer's base income was increased because of the unreported gross receipts determined by the Department in the sales tax audit. Tr. p. 9. Dept. Ex. Nos. 1, 2.
3. The Department issued a Notice of Deficiency to the taxpayer on October 4, 2000. *Id.*
4. Because the taxpayer is a Subchapter S corporation, the Notice of Deficiency only assessed the Personal Property Replacement Tax. *Id.*

Conclusions of Law:

The Department's *prima facie* case is established by the introduction into evidence of copies of its records under the certificate of the Director. 35 ILCS 5/914, Balla v. Dept. of Revenue, 96 Ill. App.3d 293 (1st Dist. 1981). In this case the Department's *prima facie* case was established when it introduced the Notice of Deficiency under the certificate of the Director showing the calculation of the deficiency. A taxpayer's testimony alone will not overcome the Department's *prima facie* case. *Id.*; Central Furniture Mart v. Johnson,

35 ILCS 105/1, *et seq.*, commonly referred to as "the sales tax".

157 Ill. App. 3d 907 (1st Dist. 1987). To overcome the Department's *prima facie* case the taxpayer must present consistent and probable evidence identified with its books and records. *Id.* The taxpayer failed to offer any evidence to overcome the Department's *prima facie* case.

At the hearing the taxpayer's representative alleged that it had been denied due process because he had not been allowed to call certain witnesses. However, the witness he wanted to call was the Department's auditor who conducted the sales tax audit. Documents he requested also pertained to the sales tax audit. The sales tax audit results were final as a matter of law prior to this hearing. Therefore, the auditor could not have provided any testimony relevant to this matter. The documents requested were irrelevant for the same reason.

If the taxpayer wanted to challenge the results of the sales tax audit it could have done so by not agreeing to the auditor's calculations in that audit and filing a timely protest at its conclusion, thereby taking advantage of its right to due process by requesting an evidentiary hearing. The taxpayer did not do that. It agreed to the results of that audit by having an officer sign a corrected return. Therefore, the result of that audit is final and beyond my jurisdiction to review in this proceeding. Further, the taxpayer cannot agree to an amount of underreported gross receipts for sales tax purposes, and then complain that the agreed amount is incorrect for income tax purposes. Accordingly, I did not deny the taxpayer due process by not allowing the opportunity to examine the auditor that conducted the sales tax audit.

The Department issued the Notice of Deficiency to the taxpayer in this case as a result of the Department's determination of unreported gross receipts determined in the Department's audit of the taxpayer's sales tax returns. Because ABC, Inc. is a Subchapter S corporation, once the sales tax audit became final, the adjustments resulting in the deficiencies assessed in this matter were made automatically by operation of Subchapter S of Internal Revenue Code (26 U.S.C § 1301 *et seq.*) and the Illinois Income Tax Act (35 ILCS 5/506(b)).

As noted above, the taxpayer offered no relevant, credible evidence at the hearing to rebut the Department's *prima facie* case. Therefore, I recommend that the Notice of Deficiency be made final.

ENTER: July 19, 2001

Administrative Law Judge